

FINAL

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

STATEMENT OF TERRANCE W. GAINER

COMMITTEE ON MERCHANT MARINE AND FISHERIES

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

UNITED STATES HOUSE OF REPRESENTATIVES

26 JUNE 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM TERRANCE W. GAINER, SPECIAL ASSISTANT TO THE SECRETARY FOR DRUG ENFORCEMENT AND PROGRAM COMPLIANCE, U.S. DEPARTMENT OF TRANSPORTATION. ON BEHALF OF SECRETARY SAMUEL K. SKINNER, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO RESPOND TO YOUR JUNE 5TH REQUEST AND TO SPEAK TO YOU TODAY REGARDING THE DEPARTMENT OF TRANSPORTATION'S DRUG TESTING PROGRAM.

UNDER THE LEADERSHIP OF SECRETARY SKINNER, THE DEPARTMENT OF TRANSPORTATION HAS AND WILL CONTINUE TO PLAY A VITAL ROLE IN THE WAR AGAINST DRUGS. SECRETARY SKINNER'S RECENTLY RELEASED NATIONAL TRANSPORTATION POLICY NOTES THAT DRUG AND ALCOHOL USE BY OPERATORS OF TRANSPORTATION VEHICLES AND OTHER TRANSPORTATION PERSONNEL IN THE PUBLIC AND PRIVATE SECTORS CAN HAVE ENORMOUS IMPLICATIONS FOR PUBLIC SAFETY. WE MUST INCREASE AWARENESS OF THE DEVASTATING EFFECTS OF DRUG AND ALCOHOL USE ON THE PERFORMANCE OF TRANSPORTATION OPERATORS AND OTHER PERSONNEL, AND PREVENT SUCH

USE, IN THE TRANSPORTATION WORKPLACE. THE PRESIDENT'S INITIATIVE FOR A DRUG-FREE AMERICA IS BEING CARRIED INTO TRANSPORTATION, THROUGH A CONCERTED CAMPAIGN FOR A DRUG-FREE TRANSPORTATION SYSTEM. IN LIGHT OF THIS COMMITMENT, THE DEPARTMENT OF TRANSPORTATION MUST ENSURE THAT THE ANTI-DRUG PROGRAM REFLECTS THE QUALITY AND RESPECT FOR INTEGRITY THAT THE INDUSTRY AND THE TRAVELING PUBLIC DESERVE.

THE RULES ISSUED BY THE DEPARTMENT CONCERNING DRUG TESTING ARE AN INTEGRAL PART OF THIS COMMITMENT. THE RULES WERE CRAFTED WITH GREAT ATTENTION TO STRIKING A BALANCE BETWEEN THE RESPONSIBILITY OF TRANSPORTATION EMPLOYERS TO ACHIEVE A DRUG FREE WORKPLACE AND THE DESIRE TO PROTECT EMPLOYEE RIGHTS. THE DEPARTMENT ISSUED DRUG TESTING RULES EFFECTING 4,000,000 (INCLUDING 120,000 MERCHANT MARINERS) TRANSPORTATION EMPLOYEES INVOLVING SIX OPERATING MODES OF TRANSPORTATION. IN IMPLEMENTING THESE PROGRAMS, THE MODES ALL USE THE TESTING PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS SET FORTH IN THE DOT REGULATION, CODIFIED AT 49 CFR PART 40. THESE WERE PUBLISHED IN THE FEDERAL REGISTER BOTH AS AN INTERIM FINAL RULE ON NOVEMBER 21, 1988 (53 FR 47002) AND AS A FINAL RULE ON DECEMBER 1, 1989 (54 FR 49854).

ADDRESSING THIS COMMITTEE'S SPECIFIC CONCERNS, THE DEPARTMENT OF TRANSPORTATION TESTING PROCEDURES ARE BASED ON GUIDELINES DEVELOPED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS),

WHICH HAS ESTABLISHED EXPERTISE IN THE AREA OF FORENSIC TOXICOLOGY AND DRUG PHARMACOLOGY. THE DHHS GUIDELINES FOR DRUG TESTING OF FEDERAL GOVERNMENT EMPLOYEES WERE PUBLISHED IN THE FEDERAL REGISTER ON APRIL 11, 1988 (53 FR 11970). THESE GUIDELINES WERE INTENDED TO ESTABLISH COMPREHENSIVE STANDARDS FOR ALL ASPECTS OF DRUG TESTING TO ENSURE THE ACCURACY OF TEST RESULTS, AND TO PROTECT THE LEGITIMATE PRIVACY EXPECTATIONS OF FEDERAL GOVERNMENT EMPLOYEES WHO ARE SUBJECT TO DRUG TESTING. ADDITIONALLY, THE GUIDELINES ESTABLISHED STANDARDS FOR CERTIFICATION OF DRUG TESTING LABORATORIES BY DHHS. THE DHHS GUIDELINES SEEK TO ACHIEVE THESE RESULTS BY SETTING FORTH STRICT PROCEDURES FOR THE COLLECTION OF URINE SAMPLES, TRANSMISSION OF SAMPLES IN A SECURED MANNER TO DRUG TESTING LABORATORIES, THE ANALYSIS OF SPECIMENS AND EVALUATION OF TEST RESULTS BY QUALIFIED LABORATORY SCIENTISTS AND MEDICAL OFFICERS INDEPENDENT OF THE LABORATORY, QUALITY CONTROL MEASURES, AND RECORD-KEEPING AND REPORTING REQUIREMENTS. IN DIRECTING DHHS TO DEVELOP THE GUIDELINES, CONGRESS SPECIFICALLY REQUIRED THAT AGENCY TO "ESTABLISH COMPREHENSIVE STANDARDS FOR ALL ASPECTS OF LABORATORY DRUG TESTING...AND LABORATORY PROCEDURES... INCLUDING STANDARDS WHICH REQUIRE THE USE OF THE BEST AVAILABLE TECHNOLOGY FOR ENSURING THE FULL RELIABILITY AND ACCURACY OF DRUG TESTS AND STRICT PROCEDURES GOVERNING THE CHAIN OF CUSTODY OF SPECIMENS COLLECTED FOR DRUG TESTING." PUBLIC LAW 100-71, § 503(a)(1)(A)(ii)(I) (10 STAT.391, 460)

WE COULD NOT JUSTIFY PROVIDING FEWER ASSURANCES AND PROTECTIONS TO THOSE TESTED UNDER PRIVATE SECTOR PROGRAMS. THEREFORE, THE DEPARTMENT ADAPTED THE DHHS GUIDELINES TO THE CIRCUMSTANCES OF THE TRANSPORTATION INDUSTRIES COGNIZANT OF THE FACT THAT THE TRANSPORTATION INDUSTRY WORKPLACE MAY DIFFER DRAMATICALLY FROM FEDERAL WORKPLACE SETTINGS. CONSIDERING DHHS'S EXPERTISE IN THIS AREA, THE DEPARTMENT CONSULTED DHHS ON THE DOT RULE AND CONTINUES THAT CONSULTATION TO ENSURE A QUALITY PROGRAM THAT WILL PROVIDE THE NECESSARY CONSTITUTIONAL PROTECTION.

FOR EXAMPLE, THE DEPARTMENT DECIDED TO REQUIRE THE USE OF DHHS' NATIONAL INSTITUTE ON DRUG ABUSE (NIDA) CERTIFIED LABORATORIES FOR DRUG TESTING MANDATED IN THE REGULATED INDUSTRIES. THE NIDA STANDARDS FOR CERTIFICATION AND THE PROFICIENCY TESTING REQUIREMENTS COMPRISE THE MOST STRINGENT LABORATORY ACCREDITATION PROGRAM AVAILABLE IN ANALYTICAL FORENSIC TOXICOLOGY FOR URINE DRUG TESTING. ADDITIONALLY, THE NIDA CERTIFICATION PROGRAM PROVIDES FOR STANDARDIZATION OF LABORATORY METHODOLOGY AND PROCEDURES, INCLUDING UNIFORM CUT-OFF LEVELS, ENSURING CONSISTENT APPLICATION OF ANALYTICAL METHODOLOGY FOR ALL SPECIMENS ANALYZED. AND FINALLY, THE USE OF NIDA CERTIFIED LABORATORIES PROVIDES A STANDARD THAT HAS WITHSTOOD THE TEST OF LEGAL CHALLENGES IN FEDERAL DRUG TESTING.

THE RELIABILITY AND VALIDITY OF TEST RESULTS IS CRUCIAL TO THE VIABILITY OF ANY TESTING PROGRAM. THE ONLY VARIABLE CONCERNING DRUG TEST RESULTS SHOULD BE WHETHER THE INDIVIDUAL HAS

USED DRUGS OR NOT - WHERE A SPECIMEN IS TESTED, WHO THE EMPLOYER IS, OR HOW A SPECIMEN IS HANDLED SHOULD NOT AFFECT THE TEST RESULT. USING THE NIDA LABORATORY SYSTEM ENABLES DOT TO WORK EFFECTIVELY WITH A COMPANION FEDERAL AGENCY TO MONITOR AND TROUBLESHOOT ANY PROBLEMS IN THE DRUG TESTING PROGRAM. ALL NIDA LABS USE THE SAME CUT-OFF LEVELS FOR ANALYSIS, THUS ENSURING THAT A "POSITIVE" RESULT IS UNIFORMLY DEFINED. THESE LABS PROVIDE A NATIONAL STANDARD SPECIFICALLY DESIGNED FOR HIGH-VOLUME DRUG SCREENING USING FORENSIC ANALYTICAL TOXICOLOGY PROCEDURES OF THE MOST STRINGENT AND RIGOROUS STANDARDS. THIS IS NOT TO SAY THAT OTHER CERTIFICATION SYSTEMS ARE NECESSARILY INADEQUATE, ONLY THAT IN A PROGRAM DEPENDENT FOR ITS SUCCESS ON THE UNERRING ACCURACY OF LAB WORK, THE DEPARTMENT IS JUSTIFIED IN INSISTING ON THE HIGHEST AVAILABLE STANDARDS.

TO DATE, NIDA HAS CERTIFIED 48 LABORATORIES WITH A COMBINED CAPACITY OF ANALYZING MORE THAN 15 MILLION SPECIMENS EACH YEAR. CERTIFIED LABORATORIES ARE NOW OPERATING ALL ACROSS THE NATION AND MORE THAN 100 ADDITIONAL LABORATORIES ARE CURRENTLY IN VARIOUS STAGES OF THE CERTIFICATION PROCESS. THE NIDA CERTIFIED LAB CAPACITY IS WELL IN EXCESS OF THE 3-6 MILLION TESTS ANNUALLY PROJECTED BY THE DEPARTMENT OF TRANSPORTATION.

ADDRESSING OVERALL PROGRAM EVALUATION AND FEASIBILITY, THE DEPARTMENT IS AWARE OF THE RECOMMENDATIONS PRESENTED TO THE CONGRESS BY THE GENERAL ACCOUNTING OFFICE IN ITS REPORT ENTITLED,

"DRUG TESTING: MANAGEMENT PROBLEMS AND LEGAL CHALLENGES FACING THE DOT'S INDUSTRY PROGRAMS", AND IS MOVING TO IMPROVE OVERALL PROGRAM MANAGEMENT. FOR EXAMPLE, THE OFFICE OF DRUG ENFORCEMENT AND PROGRAM COMPLIANCE WAS ESTABLISHED BY SECRETARY SKINNER AS THE FOCAL POINT FOR THE DRUG CONTROL POLICY. AS A PART OF THE SECRETARY'S IMMEDIATE STAFF, THE OFFICE IS WORKING WITH THE MODAL ADMINISTRATIONS TO ENHANCE THE EFFECTIVENESS OF THE DEPARTMENT'S DRUG TESTING PROGRAMS AND IMPLEMENTATION PROCEDURES.

ADDITIONALLY, THE SECRETARY IS MOVING FORWARD ON A PROPOSAL TO STANDARDIZE THE MANDATORY REPORTING REQUIREMENTS FROM INDUSTRY. A DEPARTMENTAL WORKING GROUP HAS DEVELOPED A COMPREHENSIVE PLAN FOR A MANAGEMENT INFORMATION SYSTEM TO OBTAIN AND ANALYZE EMPLOYER PROGRAM DATA.

SECRETARY SKINNER HAS ALSO ORGANIZED A TEAM OF DEPARTMENTAL OFFICIALS TO CONDUCT ASSISTANCE VISITS TO MONITOR INDUSTRY DRUG PROGRAM IMPLEMENTATION. THE TEAM VISITS WILL ALLOW THE DEPARTMENT TO GATHER INFORMATION ON THE STATUS OF PROGRAM IMPLEMENTATION AND TO DISCUSS WITH THE COMPANIES ISSUES, PROGRAMS, AND METHODS USED IN IMPLEMENTING THE DRUG TESTING RULES. THESE VISITS ARE NOT AN ENFORCEMENT EXERCISE, BUT AN EDUCATIONAL OPPORTUNITY FOR ALL INVOLVED THAT SHOULD GIVE THE DEPARTMENT HANDS ON KNOWLEDGE OF HOW THE DRUG TESTING PROGRAM IS WORKING IN THE FIELD AND HOW IT CAN BE IMPROVED.

THE DEPARTMENT OF TRANSPORTATION PARTICIPATED IN THE RECENT NIDA CONSENSUS CONFERENCE AND IS AWARE OF THE PRELIMINARY REPORT CONCERNING PROPOSED MODIFICATIONS TO THE NIDA GUIDELINES. THE DEPARTMENT WILL CONTINUE TO WORK WITH NIDA TO CONSIDER CHANGES IN PROCEDURES MENTIONED IN THE NIDA PRELIMINARY REPORT. INCLUDED IN THESE DISCUSSIONS ARE ISSUES OF: TESTING FOR ADDITIONAL DRUGS; ON-SITE TESTING; AND POSITIVE CUT-OFF LEVELS.

THE COURTS HAVE UPHELD FEDERALLY-MANDATED DRUG TESTING FOR THE FIVE DRUGS UNDER THE DHHS GUIDELINES. TESTING FOR ADDITIONAL DRUGS INCREASES THE PRIVACY INTRUSION OF TESTING. THEREFORE, A CHANGE IN THE REQUIREMENT AT THIS TIME MAY MAKE CONTINUED COURT APPROVAL OF THE DEPARTMENT'S REQUIRED TESTING MORE DIFFICULT. DHHS CERTIFICATION OF LABORATORIES DOES NOT EXTEND TO TESTING OF ANY OF THE ADDITIONAL DRUGS. LIKEWISE, DHHS APPROVED TESTING PROTOCOLS AND POSITIVE THRESHOLDS FOR DRUGS BEYOND THE FIVE FOR WHICH TESTING IS NOT REQUIRED, DO NOT EXIST. CONSEQUENTLY, THE UNIFORM STANDARDS CRUCIAL TO THE ACCURACY AND INTEGRITY OF THE TESTING PROCESS ARE NOT NOW IN PLACE FOR THE ADDITIONAL DRUGS. THE DEPARTMENT CONTINUES TO WORK WITH DHHS TO ESTABLISH THE ADDITIONAL PROTOCOLS AND CERTIFICATION REQUIREMENTS NECESSARY TO TEST FOR ADDITIONAL DRUGS.

ON-SITE TESTING IS ANOTHER ISSUE ACTIVELY BEING EXPLORED BY THE DEPARTMENT. AGAIN, WORKING CLOSELY WITH DHHS, WE ARE

EXAMINING WHETHER THERE ARE A SET OF STANDARDS AND PROCEDURES THAT COULD PROVIDE THE NECESSARY SAFEGUARDS FOR ON-SITE TEST SCREENING OF SPECIMENS. THESE SAFEGUARDS WOULD NEED TO INCLUDE THE DEVELOPMENT OF A QUALITY ASSURANCE PROGRAM, CHAIN OF CUSTODY DOCUMENTATION, STANDARDS FOR SCREENING PERSONNEL, SECURITY OF FACILITIES AND EQUIPMENT MAINTENANCE AND STANDARDIZATION. NIDA HAS CONVENED AN ON-SITE TESTING WORKING GROUP TO PROVIDE SPECIFIC RECOMMENDATIONS FOR ON-SITE SCREENING METHODOLOGY AND PROCEDURES. THE DEPARTMENT HAS A REPRESENTATIVE ON THAT WORKING GROUP.

BASED ON THE PRELIMINARY REPORT OF THE NIDA CONSENSUS CONFERENCE, DHHS IS CONSIDERING CHANGES TO THE CURRENT CUT-OFF LEVELS FOR POSITIVE TEST RESULTS, BASED ON CURRENT RESEARCH AND DEVELOPMENT IN ANALYTIC TOXICOLOGY METHODS. WHILE CONTINUING ITS AWARENESS OF CROSS-REACTIVITY, PASSIVE INHALATION AND FOOD INJECTION ISSUES IN SMALLER QUANTITIES OF DRUG METABOLITES, THE DEPARTMENT WILL REVISIT TIGHTENING POSITIVE THRESHOLDS FOLLOWING THE DHHS CONSIDERATION.

THE OPERATING ADMINISTRATIONS COVERED BY THE INDUSTRY DRUG TESTING RULES INCLUDE THE FEDERAL AVIATION ADMINISTRATION, FEDERAL RAILROAD ADMINISTRATION, FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES COAST GUARD, URBAN MASS TRANSPORTATION ADMINISTRATION, AND THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION. THESE MODAL ADMINISTRATIONS ALL ISSUED FINAL RULES ON NOVEMBER 21, 1988, SUBJECTING A CONSIDERABLE EMPLOYEE POPULATION TO MANDATORY DRUG



TESTING IN THE FOLLOWING INSTANCES: PRE-EMPLOYMENT, RANDOM, POST-ACCIDENT, REASONABLE CAUSE, AND PERIODIC. THE DRUGS TESTED FOR UNDER THE DEPARTMENT OF TRANSPORTATION AUTHORITY ARE MARIJUANA, COCAINE, AMPHETAMINES, PHENCYCLIDINE (PCP), AND OPIATES.

THE UNITED STATES COAST GUARD'S DRUG RULE (46 CFR PARTS 4, 5, AND 16, "PROGRAMS FOR CHEMICAL DRUG AND ALCOHOL TESTING OF COMMERCIAL VESSEL PERSONNEL") REQUIRES THE ESTABLISHMENT OF ANTI-DRUG PROGRAMS TO REDUCE THE INCIDENCE OF DRUG ABUSE BY COMMERCIAL VESSEL PERSONNEL. THE RULE REQUIRES MARINE EMPLOYERS TO CONDUCT DRUG TESTING PROGRAMS FOR PERSONNEL ENGAGED ABOARD VESSELS AND ACTING UNDER AUTHORITY OF A COAST GUARD LICENSE, DOCUMENT, OR CERTIFICATE, WHETHER OR NOT THEY ARE MEMBERS OF THE CREW. ADDITIONALLY, ON U.S. VESSELS THAT ARE REQUIRED TO BE OPERATED BY OR TO EMPLOY LICENSED, CERTIFICATED, OR DOCUMENTED PERSONNEL, THE RULE APPLIES TO PILOTS, CERTAIN INDUSTRIAL PERSONNEL, AND OTHER PERSONNEL ENGAGED IN VESSEL OPERATIONS. SELF-EMPLOYED VESSEL OPERATORS ARE COVERED BY THE RULE. IN DECEMBER OF 1989, THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ENJOINED THE IMPLEMENTATION OF THE COAST GUARD'S RANDOM TESTING REQUIREMENTS BECAUSE THE RULE DID NOT ADEQUATELY DEFINE THE DUTIES OF COVERED PERSONNEL TO ESTABLISH A SUFFICIENT SAFETY NEXUS. RANDOM TESTING IS CURRENTLY SUSPENDED. THE COURT VERY CLEARLY SAID THAT SOME POSITIONS ON COMMERCIAL VESSELS COULD BE SUBJECT TO RANDOM TESTING. THE COAST GUARD IS PREPARING A PROPOSED RULE THAT WOULD

REQUIRE RANDOM TESTING AND CLEARLY ESTABLISH THE SAFETY NEXUS OF COVERED EMPLOYEES. MARINE EMPLOYERS WITH MORE THAN 10 EMPLOYEES HAVE IMPLEMENTED ALL TYPES OF TESTING EXCEPT RANDOM. EMPLOYERS WITH 10 OR FEWER EMPLOYEES MUST COMPLY BY DECEMBER 21, 1990.

ALTHOUGH THE DEPARTMENT HAS A NUMBER OF REGULATIONS CONCERNING ALCOHOL ABUSE PREVENTION IN THE REGULATED TRANSPORTATION WORKPLACE, INCLUDING SOME ALCOHOL TESTING PROVISIONS, THE DEPARTMENT CURRENTLY IS REVIEWING COMMENTS RECEIVED IN RESPONSE TO AN ADVANCE NOTICE OF PROPOSED RULEMAKING, ISSUED IN NOVEMBER 1989, "ALCOHOL ABUSE PREVENTION PROGRAM FOR THE TRANSPORTATION INDUSTRY". AFTER A THOROUGH REVIEW OF THE COMMENTS RECEIVED, THE SECRETARY WILL DETERMINE WHAT, IF ANY, FURTHER ACTIONS TOWARD ALCOHOL ABUSE PREVENTION, INCLUDING TESTING, ARE NECESSARY.

FINALLY, I WANT TO REEMPHASIZE THE DEPARTMENT'S COMPLETE AND COMPREHENSIVE COMMITMENT TO ACHIEVING A DRUG-FREE TRANSPORTATION SYSTEM AND A SAFER AMERICA FOR THE TRAVELING PUBLIC. YOUR ASSISTANCE IN THIS MISSION IS APPRECIATED.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT ON THE DEPARTMENT OF TRANSPORTATION'S DRUG TESTING PROGRAM. I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

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